IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.599 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJKUMAR OMPRAKASH BATRA (PUNJABI) & ANR.
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 599 of 1997
MR KJ SHETHNA for Appellants
MR KC SHAH, APP for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 23/12/2004

ORAL JUDGEMENT
(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 ("the Code" for short)

is directed against judgment dated April 29, 1997 rendered by the learned Additional Sessions Judge, Nadiad, in Sessions Case No.157 of 1996 by which the appellants are convicted under Section 302 read with 114 as well as Section 498A read with 114 of Indian Penal Code ("IPC" for short) and each sentenced to suffer R.I. for life and fine of Rs.2,000=00, in default, R.I. for one year for commission of offence punishable under Section 302 read with 114 IPC as well as R.I. for one year and fine of Rs.1,000=00, in default, R.I. for six months for commission of offence punishable under Section 498A read with 114 IPC.

2. The facts emerging from the record of the case are as under :

Complainant Mahendrabhai Ramprakash Khurana is residing at 857/7, S.D.College Road, Krishna Textiles Street, Panipat, Haryana, and is dealing in clothes in the name and style of "Handloom Trading Company" with his father and brother. Name of his younger sister was Jyotiben, who was married to the appellant No.1. The marriage between deceased Jyotiben and the appellant No.1 was solemninzed on April 13, 1995 at Nadiad. After marriage, they started living married life together at Nadiad. About one month after the marriage, Jyotiben visited her parental house situated at Panipat, Haryana, and informed her brother Mahendrabhai that the appellants were scolding her over trivial matters, but she was not giving any reply to the appellants and that the appellant No.1 was beating her off and on. After staying at Panipat for sometime, deceased Jyotiben returned to her matrimonial home. On phone, she used to inform Mahendrabhai and her parents that the appellant No.1 was beating her often. During the subsistence of her marriage with the appellant No.1, the deceased gave birth to a boy. To attend naming ceremony of the child, Mahendrabhai with his younger sister Harjeet came to Nadiad on February 4, 1996. After the naming ceremony of the child was over on February 5, 1996, Mahendrabhai wanted to visit house of husband of his mother's sister situated at Anand with Jyotiben. Deceased Jyotiben, therefore, sought permission of the appellant No.1 to go with her brother, but the appellant No.1 dragged her in a room and beat her. Mahendrabhai asked the appellant No.1 as to why his sister was beaten, but the appellant No.1 did not give any explanation at all whereas the deceased informed that she was being beaten invariably by the appellant No.1 once in a week, and that she was also being harassed by the appellant No.2, and that acquitted accused Omprakash, who was father-in-law of deceased

Jyotiben, was siding with them and scolding her. On February 6, 1996 Mahendra and his younger sister Harjeet visited the house of husband of his mother's sister at Anand. His mother's sister Neeruben also informed him that the appellant No.1 and father-in-law as well as mother-in-law of Jyotiben were beating Jyotiben often, and harassing her. Neeruben also informed Mahendrabhai that maternal aunt of the appellant No.1 was instigating mother-in-law of Jyotiben as a result of which, mother-in-law of Jyotiben was harassing her. On February 7, 1996, Mahendrabhai in the company of his two sisters and nephew came to Panipat where deceased Jyotiben stayed for one-and-a-half month and that deceased Jyotiben narrated harassments caused to her, to her parents. Four days prior to March 22, 1996, the appellant No.1 came to Panipat to bring deceased Jyotiben to her matrimonial home and left Panipat for Nadiad on March 22, 1996. Thereafter, the parents of deceased Jyotiben came to Nadiad from Panipat on March 29, 1996 in order to speak to the appellants and others about the ill-treatment and beating of Jyotiben. The mother of the complainant returned to Panipat on April 4, 1996 whereas his father proceeded to Calcutta on business. In order to inquire after deceased Jyotiben, Mahendrabhai made several telephone calls from Panipat, and Jyotiben informed him that the appellant No.1 was still beating her whereas her mother-in-law and maternal aunt of the appellant No.1 were kicking up rows and harassing her. About a week prior to April 25, 1996 Mahendrabhai made telephone call to Jyotiben who informed him that because of kidney stone, the appellant No.1 had taken her to dispensary, but after bringing her home, she was mercilessly beaten by the appellant No.1 and that she was fed up with them. It was also informed by deceased Jyotiben to Mahendrabhai that she was intimidated by the appellants by saying that she must do as ordered by them. Mahendrabhai on hearing this, solaced Jyotiben by saying that he would come to fetch her whereupon Jyotiben asked Mahendrabhai not to come to Nadiad and expressed a hope that the appellants would mend their way, and she would be able to live in peace. On April 24, 1996 Mahendrabhai telephoned at Nadiad whereupon he was informed that all the members of the appellant No.1 had gone to attend marriage in a nearby village. On April 25, 1996, brother of father-in-law of deceased Jyotiben, i.e. Parmandbhai, informed Mahendrabhai on phone that Jyotiben had suddenly taken ill and died. Mahendrabhai called back at the house of Rukmaniben, a neighbour of the appellant No.1, and asked the person receiving the call to summon Jyotiben as he wanted to talk with Jyotiben, but again phone was attended by Parmanand, and Mahendrabhai was

informed that Jyotiben had hung from fan and died.

Before leaving for Nadiad, Mahendrabhai wanted to verify as to whether his sister Jyotiben died by hanging and, therefore, contacted City Control Room, Ahmedabad, which, in turn, tried to know from Nadiad Town Police Station, whether any incident regarding death of deceased Jyotiben by hanging was registered at the said Police Station or not. After making necessary entry in the register maintained at the police station about inquiry sought to be made by City Control Room, Ahmedabad, one Head Constable named Gokalbhai was sent to the residence of the appellants. The Head Constable brought Omprakash, i.e. original accused No.2 at the Police Station. Omprakash informed PI of Nadiad Police Station that the deceased had committed suicide. The information given by Omprakash was registered as Accidental Death Case No.15 of 1996 and investigated by Mr.P.V.Vyas, who was then PI of the Police Station. The Police Inspector wrote a yadi to Sub-Divisional Magistrate, Nadiad, to hold inquest on the dead body of the deceased, and accordingly inquest was held by the Sub-Divisional Magistrate, Nadiad, on the dead body of the deceased in presence of panch witnesses on April 26, 1996 between 8.00 a.m. and 9.15 a.m. The Investigating Officer also drew panchnama of place of occurrence on April 26, 1996 between 9.30 a.m. and 11.15 a.m. and made arrangements for sending dead body of the deceased for postmortem examination. The cause of death of the deceased indicated in the postmortem examination was "cardio respiratory arrest due to asphyxia due to strangulation".

Mahendrabhai in the company of his mother, uncle and others came to Nadiad at 1.30 p.m. on April 26, 1996 and went to matrimonial home of deceased Jyotiben. There they learnt that dead body of deceased Jyotiben was removed to Civil Hospital, Nadiad, for postmortem examination. Therefore, Mahendrabhai in the company of his uncle and friends went to Civil Hospital. At the Civil Hospital, he found that postmortem examination of deceased Jyotiben was completed and that there were marks of strangulation on the body of deceased Jyotiben. Mahendrabhai learnt that the deceased was strangulated to death by the appellants. Therefore, he lodged his complaint against the appellants and two others with Dy.S.P. of Nadiad regarding murder of his sister Jyotiben. Subsequently, on April 26, 1996, the Dy.S.P. Nadiad handed over the complaint of Mahendrabhai to Mr.Vyas for investigation. Mr.Vyas recorded statements of those persons who were found to be conversant with the facts of the case. During the course of investigation,

the appellants and two others were arrested.

3. On completion of investigation, the appellants and two others were chargesheeted in the Court of the learned Chief Judicial Magistrate, Nadiad, for commission offences punishable under Section 302 read with 114 IPC as well as Section 498A read with 114 IPC. As the offence punishable under Section 302 IPC is exclusive triable by a Court of Sessions, the case was committed to Sessions Court, Kheda, for trial where it was numbered as Sessions Case No.157 of 1996. The learned Additional Sessions Judge, Nadiad, to whom the case was made over for trial, framed charge against the appellants and others at Exh.4. It was read over and explained to the accused, who pleaded not guilty to the same, and claimed to be tried. The prosecution, therefore, examined: (1) Mahendrakumar Ramprakash Khurana as P.W.-1 at Exh.10; (2) Darshanaben Ramprakash Khurana as P.W.-2 at Exh.11; (3) Dr.Harishchandra Manmohan Thakore as P.W.-3 at Exh.12; (4) Neeruben Hitendrakumar Parmanand as P.W.-4 at Exh.17; (5) Khushiram Maganbhai Madhvani as P.W.-5 at Exh.20; (6) Nanakbhai Shobhrajbhai as P.W.-6 at Exh.23; (7) Bhalabhai Rambhai Parmar as P.W.-7 at Exh.26; (8) Sanjaybhai Bhagwandas Vajani as P.W.-8 at Exh.30; (9) Rukshmaniben Lilaram Tolani as P.W.-9 at Exh.31; (10) Dy.S.P. Prabhatsinh Vaghajibhai Bariya as P.W.-10 at Exh.32; and, (11) Investigating Officer Prakashchandra Vasudev Vyas as P.W.-11 at Exh.34, to prove its case against the accused. The prosecution also produced documentary evidence such as postmortem notes of deceased Jyotiben at Exh.15; panchnama indicating seizure of clothes of deceased at Exh.18; arrest panchnama of accused at Exh.19; inquest report at Exh.21; panchnama of place of incident at Exh.22; complaint lodge by Mahendrabhai at Exh.33; entry dated April 25, 196 made at Nadiad Police Station pursuant to information received from City Control Room, Ahmedabad, at Exh.35, etc. in support of its case against the accused. The defence of the accused was that the deceased had committed suicide by hanging, and to support this defence, they got produced on record pages No.202 and 203 from book of Medical Jurisprudence by Dr.Modi, at Exh.16.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required by Section 313 of the Code. In further statement, case of each of the accused was that a false case was filed by the prosecution. However, no defence evidence was adduced by any of the

accused.

5. On appreciation of evidence led by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that deceased died a homicidal death. According to the learned Judge, at the time of incident, the appellants were with the deceased at the house of the appellant No.1 and had motive to commit murder of the deceased. The learned Judge, therefore, held that the appellants were liable to be convicted under Section 302 read with 114 IPC. It was also noticed by the learned Judge that the deceased was subjected to cruelty by the appellants and, therefore, they were liable to be convicted under Section 498A read with 114 IPC. However, the learned Judge found that no convincing evidence was produced by the prosecution to establish that original accused Nos.2 & 4 had abetted the commission of offence by the appellants punishable under Sections 302 and 498A IPC. In view of abovereferredto conclusions, the learned Judge has convicted the appellants under Section 302 read with 114 IPC as well Section 498A read with 114 IPC and imposed sentences referred to earlier whereas acquitted original accused Nos.2 and 4, by judgment dated April 29, 1997, giving rise to instant appeal.

6. Mr.K.J.Shethna, learned counsel of the appellants, contended that the evidence on record does not conclusively establish that the deceased was strangulated to death whereas commission of suicide by the deceased is not ruled out and, therefore, the appeal should be accepted. It was argued that the chit recovered from the place of incident and written by the deceased would indicate that the deceased had committed suicide, but she was not murdered and, therefore, the impugned judgment should be set aside. It was stressed that no satisfactory evidence could be adduced against the original accused Nos.2 and 4 and as the evidence adduced against the appellants is of weak nature, their conviction under Section 302 read with 114 IPC should be set aside by this Court. Further, it was argued that the circumstances brought on record by the prosecution do not unerringly establish that murder of the deceased was committed by the appellants and, therefore, the appeal should be accepted. It was pleaded that even if the Court comes to conclusion that the circumstances brought on record are sufficient to establish the guilt against the appellant No.1, no cogent evidence is adduced by the prosecution on the basis of which conviction of the appellant No.2 can be sustained and, therefore, in any view of the matter, the appeal filed by her should be

accepted by this Court. It was also argued that if the Court accepts the evidence adduced by the prosecution regarding cruelty meted out to the deceased, at the best, offence committed by the appellant No.1 would be one punishable under Section 306 IPC and the appellant No.1 would be liable to be sentenced to R.I. for ten years, which sentence he has already undergone and, therefore, after setting aside the impugned judgment, the appellant No.1 should be set at liberty. The learned counsel for the appellant emphasised that the learned Judge of the trial Court has misappreciated the evidence on record and, therefore, the appeal should be allowed.

7. Mr.K.C.Shah, learned Additional Public Prosecutor appearing for the State, contended that the testimony of Medical Officer Dr.Thakore recorded at Exh.12 read with contents of postmortem notes unerringly establishes that the deceased died a homicidal death and, therefore, the finding recorded by the learned Judge of the trial Court being eminently just, should be upheld by this Court. It was argued that the panchnama of place of incident also rules out suicide by the deceased and, therefore, the finding recorded by the learned Judge of the trial Court that it is proved by the prosecution beyond reasonable doubt that the deceased died a homicidal death should not be interfered with by this Court. According to the learned Additional Public Prosecutor, both the appellants were staying with the deceased in the house of the appellant No.1 whereas the evidence of the complainant and others would show that the appellants were beating the deceased as well as subjecting her to cruelty, and as the prosecution has proved the motive for commission of crime, both the appellants should be held guilty under Section 302 IPC. What was maintained by the learned Additional Public Prosecutor before the Court was that a false defence that the deceased committed suicide by hanging was sought to be projected which is a circumstance against them and in view of other circumstances established by the prosecution, the conviction of the appellants under Section 302 IPC read with 114 IPC cannot be regarded as erroneous. According to the learned Additional Public Prosecutor, no explanation worth the name was given by any of the appellants about happening of incident or regarding incidents of beating to the deceased by the accused and, therefore, both the appellants should be held guilty under Section 302 IPC read with 114 IPC in view of the medical evidence and other evidence on record, which shows that the deceased died a homicidal death. The learned Additional Public Prosecutor pleaded that cogent and convincing reasons have been recorded by the learned

Judge of the trial Court for convicting the appellants under Section 302 IPC read with 114 IPC and as the learned advocate of the appellants has failed to dislodge them, the appeal should be dismissed.

8. This Court has heard Mr.K.J.Shethna, learned counsel of the appellants, and Mr.K.C.Shah, learned Additional Public Prosecutor, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

9. Before considering the criminal liability, if any, of the appellants, it would be relevant to determine whether deceased Jyotiben died a homicidal death or suicidal death because the prosecution case is that she died a homicidal death whereas the case of the appellants is that she died a suicidal death.

9.1 Dr.Harishchandra Manmohan Thakore, who was Medical Officer, Civil Hospital, Nadiad, and who had performed autopsy on the dead body of the deceased, is examined as P.W.3 at Exh.12. His testimony would show that he had received dead body of the deceased on April 26, 1996 for postmortem examination along with yadi sent by the Executive Magistrate, Nadiad, and that autopsy on the dead body of the deceased was performed by a panel of two doctors. The witness has mentioned that another doctor, who had also participated in the postmortem examination of the deceased, was Dr.D.M.Bhaderiya. According to the Medical Officer, dead body of the deceased was identified by Omprakash, i.e. original accused No.2. The witness in his testimony before the Court has stated that the dead body of the deceased was well-built and cold and that rigor mortis was present on both the lower limbs. It is further mentioned by him that PM lividity was present on depending part of back, waist, thigh, etc. and eyes were found to be closed, but on opening, subconjunctival hemorrhage was found to be present, whereas pupils were found to be dilated. It is mentioned by the doctor that bleeding from nose was found whereas mouth was found to be partially opened and tongue was protruding between teeth and there was engorgement of vein of face and neck, whereas petechial hemorrhages were seen on face particularly on both cheeks.

9.2 According to the Medical Officer, following external injuries were noticed by him while performing postmortem examination on the dead body of the deceased:-

a. A horizontal yellowish brown, dry, hard, groove (depression, ligature mark) like parchment seen on the middle part of neck at front and both side of the neck. No mark seen on the back. Abrasion and ecchymosis seen at the edges.

In subcutaneous tissue ecchymosis present.

Neck muscles bleeding present and torn beneath the ligature mark.

Vertical fracture about 2 cms x through and through present on upper region of thyroid cartilage corresponding to ligature mark.

Vertical fracture of tracheal ring through and through present corresponding ligature mark.

Tracheal wall deeply congested with sub mucous ecchymosis present.

9.3 On internal examination, following injuries were found by the Medical Officer:-

a. Meninges and brain were found congested whereas both the lungs were deeply congested and oedematous whereas on cut, dark blood stained frothy mucous discharged was seen.

b. Pericardium was congested and petechial hemorrhage was seen. Left chambers of heart were found to be empty whereas right chambers were full of blood.

c. Liver, gallbladders, duodenum, spleen, kidneys were found congested.

According to the Medical Officer, death of the deceased could have occurred within four to six hours of last meal and within twenty-four hours of postmortem examination with a margin of six hours on either side. What is asserted by the doctor before the Court is that the cause of death of the deceased was cardio respiratory

arrest due to asphyxia due to strangulation. It is further stated by the doctor in his testimony that the injuries mentioned by him in Column No.17 of postmortem notes were sufficient in ordinary course of nature to cause death of the deceased. The medical officer produced post-mortem notes of the deceased at Exh.15. In his examination-in-chief, the doctor has mentioned that postmortem was jointly conducted by him and Dr.Bhaderia and that additional Annexure-II to the postmortem notes indicating external injuries noticed on the dead body of the deceased was signed by both of them.

In his cross-examination, it is stated by him that impression of ligature marks would vary as per material used and that he has not mentioned in his postmortem notes the depth of ligature mark. It was admitted by him that depth of ligature mark would depend upon material used, but it was asserted by him that it was not true to say that depth of ligature mark would be more if material used was hard one. According to him, breadth of the ligature mark would depend upon breadth of material used. The suggestion made by the defence that there must be superficial marks if muddamal articles No.4 & 5 were used as ligatures, was denied by him, and it was assertively stated that if saree is used as ligature, it is not necessary that material would be bloodstained. The suggestion made by the defence that there were abrasions on the ligature marks and, therefore, hard material was used, was denied by him. According to the Medical Officer, if saree was used as ligature, there was little possibility of abrasions taking place. It was also admitted by him that no marks of struggle were found on the body of the deceased. The suggestion made by the defence that if body is well-built and there is absence of struggle mark, there will be no possibility of strangulation, was emphatically denied by him. It was asserted by the Medical Officer in his cross-examination that in case of strangulation, if there is stoppage of oxygen for three to four minutes, brain death would be caused, but he could not say for certain that in how many minutes, the deceased must have died. According to the Medical Officer, he had noticed ligature marks below skin on tissue dissection. What is asserted by the doctor during his cross-examination is that he had not found that the neck of the deceased was stretched and elongated. The suggestion made by the defence that find of elongated neck suggests hanging, was emphatically denied by him. He was confronted with the commentary on pages 202 & 203 from 1993 Edition of Medical Jurisprudence by Modi and he has stated that he was agreeing with the same. However, after looking to the

difference between hanging and strangulation, as given in the tabular form on page 203, the suggestion made by the defence that this was a case of hanging and not of strangulation was emphatically denied by him.

This is all what transpires from the testimony of the Medical Officer.

10. The plea that homicidal death of deceased Jyotiben is not proved by the prosecution, whereas probability of the deceased having committed suicide is not ruled out and, therefore, the conviction of the appellants recorded under Section 302 read with 114 IPC should be set aside, is devoid of merits and cannot be accepted.

10.1 Autopsy (autos = self; opis = view) literally means to see for oneself. Medicolegal autopsy (necropsy) or postmortem examination (necros = dead, opis = view; post = after, mortem = death) is a special type of scientific examination of a dead body carried out under the laws of the State for protection of its citizens and to assist the identification and prosecution of the guilty. The medical evidence witness who performs a postmortem examination is a witness of fact though he also gives an opinion on certain aspects of the case. Further, the value of medical witness is not merely a check upon the testimony of eye witnesses, it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. Under the circumstances, the testimony of Dr.Thakore recorded at Exh.12 cannot be brushed aside on the ground that it is merely an opinion evidence. The findings, which were noticed by Dr.Thakore while performing autopsy on the dead body of the deceased, are findings of facts. They unerringly establish that the deceased was strangulated to death and she had not committed suicide as is/was sought to be propounded by the appellants. At this stage, it would be relevant to refer to pages No. 202 & 203 from the Book of Medical Jurisprudence, 1993 Edition, by Dr.Modi, which were got produced by the appellants themselves at Exh.16 during the course of cross-examination of Dr.Thakore. Therein a table mentioned indicating differences between hanging and strangulation. The said table is reproduced here and is as under:

Hanging	Strangulation

1. Mostly suicidal	1. Mostly homicidal
2. Face, usually pale and petechia rare.	2. Face, congested, livid and marked with petechiae.
3. Saliva dribbling out of the mouth down on the chin and chest.	3. Saliva, no such dribbling.
4. Neck, stretched and elongated in fresh bodies.	4. Neck, not so.
5. External signs of asphyxia, usually not well marked.	5. External signs of asphyxia, very well marked (minimal if due to vasovagal and carotid sinus effect).
6. Bleeding from the nose, mouth and ears very rare.	6. Bleeding from the nose, mouth and ears may be found.
7. Ligature mark, oblique, non-contin- uous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	7. Ligature mark horizontal or transverse continuous, round the neck, low down in the neck low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
8. Abrasions and ecchymoses round about the edges of the ligature mark, rare	8. Abrasions and ecchymosis round about the edges of the ligature mark, common.
9. Subcutaneous tissues under the mark white, hard and glistening.	9. Subcutaneous tissues under the mark, ecchymosed.
10. Injury to the muscles of the neck rare.	10. Injury to the muscles of the neck, common.
11. Carotid arteries, internal coats ruptured in violent cases of a long drop.	11. Carotid coats ordinarily ruptured.
12. Fracture of the larynx and trachea very rare and that too in judicial hanging.	12. Fracture of the larynx and trachea, often found also hyoid bone.
13. Fracture-dislocation of the cervical vertebrae common in judicial hanging	13. Fracture-dislocation of the cervical vertebrae rare.
14. Scratches, abrasions and bruises on the face, neck and other parts of the body, usually not present.	14. Scratches, abrasions, finger, nail marks and bruises on the face, neck and other parts of

the body, usually present.	
15. No evidence of sexual assault.	15. Sometimes evidence of sexual assault.
16. Emphysematous bullae on the surface of the lungs not present.	16. Emphysematous bullae on the surface of the lungs, may be present.

10.2 According to Dr.Modi, hanging is mostly suicidal whereas strangulation is mostly homicidal. In case of hanging, face is usually pale and petechiae is rare whereas in case of strangulation face is congested, livid and marked with petechiae. Dr.Thakore has mentioned in his testimony and in postmortem notes that petechial haemorrages were seen on the face particularly on both the cheeks. As per the tests and differences laid down in the above mentioned table, in case of hanging normally, saliva dribbling out of the mouth down on the chin and chest would be found whereas in case of strangulation, saliva would be found, but there would be no such dribbling. The doctor in his postmortem notes has mentioned that that the mouth of the deceased was found to be partially open. He has not mentioned that there saliva was dribbling out of the mount down on the chin and chest. Further, in case of hanging, neck would be found stretched and elongated in fresh body whereas in case of strangulation, neck would not be found to be stretched or elongated. The doctor in his postmortem examination has stated that there was engorgement of vein of face and neck. The doctor has not mentioned that the neck of the deceased was stretched and elongated. One of the tests laid down by Dr.Modi, as indicated in the table quoted above, is that in case of hanging, bleeding from the nose is very rare whereas in case of strangulation bleeding is found. The doctor has mentioned in his postmortem notes that there was bleeding down the nose of the deceased. Again, in case of hanging, ligature mark would be oblique, noncontinuous and placed high up in the neck between chin and larynx whereas the base of the groove or furrow being hard, would be yellow and parchment-like. In case of strangulation, mark would be horizontal or transverse continuous round the neck, low down in the neck below the thyroid and base of the groove or furrow being soft and reddish. The doctor in his postmortem notes has stated that a horizontal yellowish, brown, dry, hard groove (depression, ligature marks) like parchment was seen on the middle part of the neck at front and both the sides of the neck. According to the doctor, no marks were seen on the back, but abrasions and

ecchymosis were seen at the edges, and as per the table quoted above, in case of strangulation, abrasions and ecchymosis round about the edges of the ligature mark are common. It is mentioned in the table that in case of hanging, subcutaneous tissues under the mark would normally be found white, hard and glistening whereas in case of strangulation, subcutaneous tissues under the mark would be ecchymosed. Doctor Thakore in his postmortem notes has mentioned that subcutaneous tissue under the mark was ecchymosed. One of the major features of strangulation is that left chambers of heart would be found empty and right chambers full of blood. The Doctor in his testimony before the Court has unequivocally stated that left chambers of heart of the deceased were empty and right chambers were full of blood. According to the said table, in case of hanging, carotid arteries would be found ruptured in violent cases of a long drop whereas in case of strangulation, internal coats would only be found ruptured. The doctor in his postmortem notes has, in terms, has stated that in subcutaneous tissue ecchymosis was present and there was vertical fracture about 2 cms. through and through on middle upper region of thyroid cartilage corresponding to ligature mark. Again, in case of strangulation, it is mentioned that fracture of larynging and trachea is often found and also hyoid bone.

10.3 A conjoint and meaningful reading of the tests/differences pointed out by Dr.Modi in cases of hanging and strangulation and the findings recorded by Dr.Thakore in postmortem notes unerringly establish that the deceased was strangulated to death and she had not committed suicide by hanging. Thus, on the basis of relevant pages of the book, which were got produced on record by the appellants themselves, the case that the deceased was strangulated to death, is established by the prosecution.

10.4 There is another tale-telling circumstance on the record of the case, which rules out completely the case of suicide by hanging. As observed earlier, the prosecution has produced panchnama of place of occurrence at Exh.22. In the said panchnama, it is mentioned that just near the dead body, a trunk and a chair were found and in order to ascertain, whether the hook fitted in the ceiling was approachable for committing suicide by the deceased or not, first of all, the trunk having height of 12 inches was brought just under the hook. Thereafter, the chair was placed on the trunk and it is mentioned that distance between the chair which was kept on the trunk and the hook is 6 ft. 2 inches. It is nobody's

case that height of the deceased was 6 ft. and 2 inches. Thus, the contents of panchnama of place of occurrence produced at Exh.22 makes it evident that the hook fitted in the ceiling was at such a height, which was unapproachable for committing suicide. Moreover, the evidence on record does not suggest that any one had seen the dead body of the deceased hanging from the hook. As noticed earlier, on necessary information being conveyed by the City Control Room, Ahmedabad, Head Constable Gokalbhai of Mobile Van of Nadiad Town Police had gone to the residence of the appellant No.1. The record of the case unerringly establishes that the dead body of the deceased was found lying on the floor and it was not found hanging from the hook. It is not the case of the appellants that the dead body which was hanging from the hook was brought down by them in presence of police personnel. Having regard to the totality of the facts and circumstances of the case, the defence that the deceased committed suicide by hanging is not probabilised at all whereas the reliable evidence adduced by the prosecution establishes beyond pale of doubt that the deceased was strangulated to death. Thus, the finding recorded by the learned Judge of the trial Court to the effect that it is proved by the prosecution that the deceased died a homicidal death is found to be eminently just and is hereby upheld.

11. This is a case based on circumstantial evidence. The prosecution has not produced direct evidence to establish charge against the appellants. Under the circumstances, it would be relevant to notice law relating to the circumstantial evidence. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicion do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every

hypothesis, but the one proposed to be proved by the prosecution. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or, are not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. In Sharad v. State of Maharashtra, A.I.R. 1984 SC 1622, after referring to earlier case law, the Supreme Court has summarized the conditions to be fulfilled in a case based on circumstantial evidence as under:-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned `must' or `should' and not `may' be established; (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) the circumstances should be of a conclusive nature and tendency; (iv) they should exclude every possible hypothesis except the one to be proved; (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and, (vi) where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

If the aforesaid various conditions are

fulfilled, only then a Court can use a false explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between the facts, called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way. It has to consider the evidence and decide whether that evidence proves a particular fact or not, and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt does not applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, human conduct and their relations to the facts of the particular case.

12. Having noticed the principles to be applied to a case based on circumstantial evidence, this Court proposes to find out as to which circumstances are established against the appellants and whether a chain of circumstances so established prove the guilt or otherwise of the appellants.

12.1 As observed earlier, it is satisfactorily proved by the prosecution that deceased Jyotiben was strangulated to death. The first circumstance, which is sought to be relied upon by the prosecution against the appellants, is that both of them were the only members in the family of the appellant No.1, who were present in the house, when deceased Jyotiben was strangulated to death. In order to prove this fact, the prosecution has examined (1) witness Mahendrakumar Khurana at Exh.10; (2) Darshanaben Khurana at Exh.11; and, (3) Neeruben Hitendrakumar Parmanand at Exh.17 etc.

12.2 Witness Mahendrakumar, who is brother of the deceased, has stated in his examination-in-chief that after marriage, his sister Jyotiben was residing at Nadiad with her husband, father-in-law and mother-in-law. His testimony also shows that during the subsistence of marriage with the appellant No.1, her sister had given birth to a child. Thus, at the time of incident, in all

there were five members in the family of the appellant No.1 including the deceased. This assertion of witness Mahendrakumar is not challenged in his cross-examination. Again, witness Darshanaben, who is mother of the deceased, has stated in her testimony that after marriage, her daughter Jyoti was residing at Nadiad with her husband, father-in-law and mother-in-law. This assertion made by the witness Darshanaben is also not challenged in her cross-examination. Witness Neeruben, examined at Exh.17, has also stated in her testimony that marriage of deceased Jyotiben was solemnized with the appellant No.1 on April 13, 1995 and after marriage, the deceased was staying in the house, which is situated near her house. It is mentioned by her in her testimony that father-in-law and mother-in-law of deceased Jyoti were meeting out cruelty to Jyoti and that she had informed Darshanaben on phone about the cruelty meted out to deceased Jyoti. A fair reading of the evidence tendered by abovenamed three witnesses would show that the deceased was staying in the house of the appellants.

12.3 The panchnama of place of incident would indicate that the incident in question had taken place in the bedroom of the appellant No.1 and though a hook fitted in the ceiling of the room was noticed, it is found to be unapproachable for committing suicide. Till the arrival of Head Constable of Mobile Van of Nadiad Town Police Station, the appellants had not disclosed before any one or before any authority that the deceased was strangulated to death. It was only after the Head Constable had brought Omprakash to Nadiad Town Police Station, that Omprakash is alleged to have given the information regarding suicide committed by the deceased at his house.

12.4 In case, which is based on circumstantial evidence, the motive bears important significance. However, the motive locks up in the mind of the accused and sometimes, it is difficult to unlock. Failure to discover the motive of an offence does not signify its nonexistence. Though proof of motive is never considered as indispensable for conviction, the facts of the present case would indicate that the prosecution has led evidence regarding the motive of the appellant No.1 which prompted him to strangulate his wife to death. The testimony of witness Darshanaben, who is mother of deceased, shows that the appellant No.1 was not doing any work at all and was whiling away time as a result of which, the deceased was asking him to do some work and, therefore, the appellant No.1 was annoyed and was beating her. Her evidence also shows that the appellant No.1 was

suspecting that the deceased had an affair with one Jitubhai, who was husband of sister of mother of the deceased. Abovereferredto assertions have been made by Darshanaben in her examination-in-chief and those assertions have not been challenged effectively by the defence at all. May be strong evidence regarding the motive is not adduced by the prosecution before the Court. However, there is no manner of doubt that the prosecution has brought on record some motive which was sufficient for the appellant No.1 to commit murder of the deceased. No hue and cry was raised by the appellant No.1 on seeing his wife hanging by neck. The evidence on record shows that the appellant No.1 and the deceased were not leading a congenial marital life. The false defence taken by the appellant No.1 that the deceased had committed suicide will have to be treated as an additional link which completes chain of circumstances against him. Under the circumstances, there is no manner of doubt that the appellant No.1 alone was the author of the crime. Though the appellant No.2 is charged for commission of offence punishable under Section 302 read with 114 IPC, no evidence could be adduced by the prosecution to establish that she had abetted and aided the appellant No.1 in committing murder of the deceased. It is not probable that two persons would jointly throttle the deceased to death. Therefore, the conviction of the appellant No.2 recorded by the trial Court under Section 302 with the aid of Section 114 IPC is liable to be set aside.

13. At this stage, it would be relevant to refer to one decision of the Supreme Court rendered in Mandhari v. State of Chattisgarh, (2002) 4 SCC 308. It was a case based on circumstantial evidence. The appellant in the said case himself had made a false report of commission of suicide by his wife and admitted in his examination under Section 313 of the Code that he was present in the house at the time of incident. The postmortem report showed that there was ligature mark on the neck of the deceased which was ante-mortem. The opinion of the doctor was clear and definite that such ligature mark could not have been caused by hanging, but could have been caused by strangulation. The conduct of the appellant was also not natural. When he found his wife hanging by the neck, he neither raised any hue and cry nor called any villager living nearby. The matter was reported to the police by the appellant on being insisted by one of witnesses and the Sarpanch. It was also noticed by the Supreme Court that the appellant and his deceased wife were not leading a congenial marital life and the conduct of the appellant subsequent to the

incident was unnatural whereas the spot map showed that rafter of the roof was at a height which was unapproachable for committing suicide. After taking cumulative effect of the abovereferredto facts, which were proved by the prosecution in that case, the Supreme Court has held that the facts proved cumulatively led only to one irresistible conclusion that the appellant was the author of the crime. Applying the principle laid down in the said case to the facts of the present case, which stand proved as noticed earlier, the cumulative effect of those proved facts lead to only one irresistible conclusion that the appellant No.1 alone was the author of the crime.

14. This Court further notices that the Supreme Court in case of (1) Vasa Chandra Shekhar v. Poona Satya Narayana (2000) 6 SCC 286 and (2) Geetha v. State of Karnataka (2000) 10 SCC 72, while explaining law relating to circumstantial evidence, has ruled that where circumstances proved are put to the accused through his examination under Section 313 of the Code of Criminal Procedure and the accused merely denies the same, then such denial would be an additional link in the chain of circumstances to bring home the charge against the accused. As indicated earlier, it is proved by cogent and reliable evidence that the incident had taken place in the bedroom of the appellant No.1. Therefore, if the death of his wife occurs in suspicious circumstances, a reasonable explanation was expected from the appellant No.1. Here in this case, the incriminating circumstances proved were put to the appellant No.1 and in his further statement recorded under Section 313 of the Code, he has merely denied the same. Therefore, such denial on the part of the appellant No.1 will have to be treated as an additional link in the chain of circumstances to bring home the charge against him. The cumulative effect of the circumstances proved clearly establishes that in all human probability, the act of commission of murder of the deceased was done by the appellant No.1 and the appellant No.1 alone. The conclusions drawn by this Court from proved facts are consistent only with the guilt of the appellant No.1 and are not consistent in any manner with his innocence. Therefore, appeal filed by him is liable to be dismissed.

15. Though this Court has come to the conclusion that it is not established by the prosecution that the appellant No.2 is guilty under Section 302 IPC read with 114 IPC, this Court finds that the finding recorded by the learned Judge of the trial Court that the appellant No.2 had also subjected the deceased to cruelty as

defined under Section 498A IPC is eminently just and deserves to be upheld. The cruelty meted out to the deceased by the appellant No.2 has been enumerated in detail by witness Mahendrabhai, who is brother of the deceased, and witness Darshanaben, who is mother of the deceased. The testimony of witness Mahendrakumar would show that the appellant No.1 had beaten his sister in his presence when a suggestion was made by the witness to visit the house of sister of his mother in the company of the deceased. His testimony satisfactorily establishes that deceased Jyotiben was informing him and her parents on phone that both the appellants were picking up quarrels with her over trivial matters and were beating her. In fact, it is not seriously disputed by the learned counsel of the appellants before this Court that the commission of offence by the appellants under Section 498A read with 114 IPC is not established by the prosecution. The evidence regarding cruelty meted out by the appellants to the deceased is found to be such a sterling quality that the learned Judge of the trial Court was justified in accepting the case of the prosecution against the appellants under Section 498A IPC. Therefore, it is held that the conviction of the appellants under Section 498A read with 114 IPC is found to be perfectly just and no case is made out by the appellants to interfere with the same. The alternative contention raised by Mr.K.J.Shethna, learned counsel of the appellants, that the appellant No.1 would be at the best guilty under Section 306 IPC cannot be accepted in view of the finding that the deceased was done to death by strangulation.

16. The net result of the above discussion is that the appeal filed by the appellant No.1 has no merits and is liable to be dismissed whereas the appeal filed by the appellant No.2 deserves acceptance in part.

For the foregoing reasons, Criminal Appeal No.599 of 1997 is partly allowed. The conviction of the appellant No.1 under Sections 302 and 498A of the Indian Penal Code recorded by the learned Additional Sessions Judge, Nadiad, vide judgment dated April 29, 1997 in Sessions Case No.157 of 1996 and sentences imposed therefor are hereby confirmed. The conviction of the appellant No.2 for commission of offence punishable under Section 302 IPC read with 114 IPC is hereby set aside, but her conviction under Section 498A IPC and sentence imposed on her for the same is hereby upheld. Muddamal to be disposed of in terms of the directions given by the

learned Judge in the judgment impugned in the appeal.

(J.M. Panchal, J.)

(M.C. Patel, J.)

Rajendra